MT LEGISLATIVE HISTORY

Chapter 188 19 77

Bill H _____ (S) 41 Original bill & hist. ✓C

H. Committee on Judiciary S. Committee on Judiciary

Hearing Date(s)			Hearing Date(s)	
	MAR 8	✓C	JAN 12	✓C
	MAR 10	✓C	JAN 20	✓C
	_____	___C	FEB 18	✓C
	_____	___C	_____	___C
Date Out	MAR 10	✓C	FEB 18	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Senate BILL NO. 41

INTRODUCED BY Gage Turnage

(Interim Judiciary Committee Bill)

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR APPROVAL OF ATTORNEY FEES IN CONNECTION WITH CLAIMS AGAINST GOVERNMENTAL ENTITIES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Review of attorney fees for claims against state. If an award or settlement in excess of $50,000 is granted in any claim against the state or a county, municipality, taxing district, or other political subdivision of the state, the fee of plaintiff's attorney is subject to approval by the court. The court may approve a reasonable fee with due regard to the time spent by the attorney, the complexity of the case, and the skill demonstrated by the attorney in the case.

-End-

SB41

INTRODUCED BILL

SENATE BILL NO. 41

INTRODUCED BY TOWE, TURNAGE

(Interm Judiciary Committee Bill)

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR APPROVAL OF ATTORNEY FEES IN CONNECTION WITH CLAIMS AGAINST GOVERNMENTAL ENTITIES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Refer To Introduced Bill

(Strike everything after the enacting clause and insert:)

Section 1. Court approval of attorney's fees. (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision thereof, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The district court may regulate the amount of the attorney's fee in any tort claim against the state or a political subdivision thereof. In regulating the amount of the fee, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.

REFERENCE BILL

(3) Attorney's fees regulated under this section shall be made a part of the court record and are open to the public.

(4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing attorney's fees under this section, he forfeits the right to any fee which he may have collected or been entitled to collect.

-End-

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 33	revise, repeal & recodify election laws relating to criminal provisions for election & campaign practices	2-24	Blaylock	3-11 Friday	concurred in	3/22
SB 335	amend-endangering welfare of children, make it clearly applicable to all persons, whether have custody, etc.	2-25	Turnage	3-11 Friday	concurred	3-11
SB 41	provide for approval of attorney fees in connection with claims against gvt entities	2-26	Towe	3-8 Tuesday	concurred	3-10
SB 376	amend water use act to clarify water use rights, etc.	2-26	Boylan	3-15 Tuesday	table	3/25
SJR 16	urging supreme court to rescind its rule requiring aspirants to Montana bar to hold degree from accreditated law school	2-26	Brown	3-14 Monday	no recommendation	3-17
SB 187	avoid possibility of dbl jeopardy & to cause administrative penalty to be	3-2	Lee	3-14 Monday	concurred	3-16

JUDICIARY COMMITTEE
March 8, 1977

The regular meeting of the House Judiciary Committee was held on Tuesday, March 8 at 7:30 a.m. in room 436 of the Capitol Building, Helena, Montana. Chairmam Scully presided. All members were present with the exception of Representative Colburn.

Scheduled for hearing were Senate Bills 40, 42, 43 and 53.

SENATOR TOWE, sponsor of the bills asked that Senate Bill 41 be included, since it is part of the package of bills. The committee agreed to hear this bill along with the others.

SENATOR TOWE:
These bills are part of the interim study. The new Montana constitution spelled out that there would be no sovereign immunity. He discussed the reason for sovereign immunity and how it came about, the fact that in common law the king could do no wrong. He explained the insurance and the $25,000 deductible The bills dealing with constitutional amendments must have 2/3 of the legislature voting in order to pass. He said he felt the approach to drafting the bills was somewhat unique. We are preserving the right to sue, however we are limiting the amount of damages in some instances. Each of the bills does a separate thing which I will explain.

1. #43 is the main bill.
2. #53 is the 2nd bill and involves a self-insurance fund.
3. #41 sets a limit on attorneys fees.
4. #42 reinserts certain portions of the constitution.
5. #40 is a clean-up or repealer.

First, #43. He discussed the tangible and intangible, the economic and non-economic things you can sue for. The non-economic is not allowed for.

#53 is the self-insurance bill. It allows for a deductible self-insurance program and reserve. He explained the sources and stated that if the judgment cannot be paid from these four sources it cannot be paid.

#41 regulates the attorneys fees. The attorney must file a claim. The district court may regulate the amount of the attorneys fee.

#42 concerns the constitutional amendments needed. One of the existing things in the law that allow someone to sue are invalid in the new constitution. They must be reinstated with a 2/3 vote.

#40 repeals and revises certain sections of the law. He went throu the bill and explained the general practice of law.

The Senator said that SB 42 and 43 need 2/3 vote in order to pass. He wished to remind the committee of this. The Senator also said they had not found anyone opposed to any of these bills.

JUDICIARY COMMITTEE

Executive session
March 10, 1977

The executive session followed the regular meeting of the House Judiciary committee on Thursday, March 10 at 8:30 a.m. in room 436 of the Capitol Building, Helena, Montana. Members absent and not voting were Representatives Dussault and Kennerly.

SENATE BILL #41:
REPRESENTATIVE LORY moved "be concurred in".
The motion carried with the vote unanimous.

SENATE BILL #42:
REPRESENTATIVE CONROY moved "be concurred in".
The motion carried with Representative Hand voting "no".

SENATE BILL #43:
REPRESENTATIVE RAMIREZ moved "be concurred in".
The motion carried with the vote unanimous.

SENATE BILL #53:
REPRESENTATIVE LORY moved "be concurred in".
Representative Eudaily reported what he had found out on the school fund. There is a special school fund in budgets for liability coverage. That would make it possible for them to set up this fund and levy this millage. There is no reserve fund but the schools feel this can be set up. After additional discussion it was decided to pass consideration for the day until the members had more time to study the bill.

SENATE BILL #58:
REPRESENTATIVE EUDAILY moved "be concurred in".
A general discussion followed about what this bill does.
The question was called and the motion carried with the vote unanimous.

SENATE BILL #119:
REPRESENTATIVE KEYSER moved "be concurred in".
Representative Ramirez moved to amend a section he was concerned about. A discussion followed about workmen's compensation and how this bill would be affected by the portion dealing with that subject. Representative Ramirez withdrew his motion and the original motion was back in force. The question was called and the motion carried with the vote unanimous.

SENATE BILL #176:
REPRESENTATIVE LORY moved "be concurred in".
The motion carried with Representative Day voting "no".

SENATE BILL #215:
REPRESENTATIVE CONROY moved "be concurred in".
The motion carried with the vote unanimous.

Chairman Scully assigned the following representatives to carry the respective senate bills as follows:

Senate Bill 40	Representative Lory
Senate Bill 41	Representative Lory
Senate Bill 42	Representative Lory
Senate Bill 43	Representative Lory
Senate Bill 58	Representative Scully
Senate Bill 119	Representative Keyser
Senate Bill 176	Representative Day
Senate Bill 215	Representative Conroy or Roth

The meeting adjourned at 9:00 a.m. so the water sub-committee could meet.

JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
S.B. 9	1-3-77	1-11-77	1-15-77			1-15-77			
S.B. 12	1-3-77	2-16-77	2-18-77			2-18-77			
S.B. 20	1-3-77	1-7-77	1-7-77			1-7-77			
S.B. 23	1-11-77	1-18-77	1-29-77		1-29-77				
S.B. 23	Rereferred 2-1-77	2-4-77				2-4-77			
S.B. 27	1-3-77	1-11 & 1-14-77	2-17-77			2-17-77			
S.B. 30	1-3-77	1-11, 1-13, 1-17-77	1-17-77			1-20-77			
S.B. 32	1-3-77	Duplicate of S.B. 40	2-10-77		2-10-77				
S.B. 33	1-3-77	1-11 & 1-14-77	2-17-77			2-17-77			
S.B. 34	1-3-77	1-17, 1-18, 1-28, 1-29-77	1-31-77			1-31-77			
S.B. 37	1-4-77	1-14-77	2-10-77			2-10-77			
S.B. 40	1-5-77	1-12-77	1-20-77	1-20-77					
S.B. 41	1-5-77	1-12 & 1-20-77	2-18-77			2-18-77			
S.B. 42	1-5-77	1-12 & 1-20-77	1-20-77	1-20-77					
S.B. 43	1-5-77	1-12 & 1-20-77	1-20-77			1-20-77			
S.B. 53	1-6-77	1-12 & 1-20-77	1-20-77	1-20-77					

House Bills and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 12, 1977

The meeting of the Judiciary Committee was called to order by Chairman Jean Turnage on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members were present with the exception of Senator Roberts who was excused. Senator Warden was excused at 10:00 a.m. as she had to testify at another meeting.

The following witnesses were present to testify:

Representative John Vincent - District 78
Glen Drake, Helena attorney - Montana League of Cities and Towns and the American Insurance Association
Gregg McCurdy - Montana Association of Counties
W. Boyce Clarke - Independent Insurance Agents of Montana
Arnold Kuenning - Insurance Consultant representing the Independent Insurance Agents of Montana and the Mutual Agents of Montana
Mike Young, Attorney - Department of Administration
Bob Biggerstaff - Montana Association of Conservation Districts
Gregg Morgan, Bozeman attorney - Montana State Bar Associatic
Robert Corcoran, Chief Tax Counsel - Montana Department of Revenue
William L. Romine - Montana attorney
John Bell, Helena - attorney

CONSIDERATION OF SENATE BILLS 40, 41, 42, 43 and 53:

Senator Towe requested that the bills be taken up in the following order: S.B. 43, 53, 41, 42 and 40. The request was gra ed by Chairman Turnage. Sen. Towe noted S.B. 32 is identical to S

Senator Towe then explained each bill in the above order. While doing this, he told the committee that these bills, in order to pass, would require a two-thirds vote by each House. This is an exception to the general rule governing sovereign immunity.

Representative Vincent, appearing as a proponent of S.B. 43, stated that he supported this bill with one exception and that is relative to the limits in subsection (b) on pages 4 and 5. He offered the committee two suggested alternatives which he thought would improve the bill. He was then thanked by the Chairman for his testimony.

Other proponents of the bills appearing and offering testimony to the committee were:

Glen Drake, Helena attorney, representing the American Insurance Association and the Montana League of Cities and Towns;

Gregg McCurdy, representing the Montana Association of Counties, who had one question on S.B. 43, page 5, line 3, regarding the words "taxing districts";

W. Boyce Clarke, representing the Independent Insurance Agents of Montana, who presented a prepared statement on each bill to the committee (see attached). Mr. Clarke also commended the subcommittee and their staff on doing a very good job on these bills.

Arnold Kuenning, an Insurance Consultant representing the Independent Insurance Agents of Montana and the Mutual Agents of Montana. Mr. Kuenning presented the committee with a prepared statement. (See attachment)

Mike Young, Attorney for the Montana Department of Administration;

Bob Biggerstaff, representing the Montana Association of Conservation Districts, who said that they are proponents but are concerned that they might not be included.

Gregg Morgan of the State Bar Association said that they wished to applaud the committee and support the work done.

Opponents appearing were:

Bob Corcoran, representing Bill Groff, Director of the Department of Revenue, who said the Department of Revenue was concerned with a couple of items in the bills, namely, in Title 84 the portion referring to claims of refunds of taxes and and the portion on quiet title actions in S.B. 40. Senator Towe said that was just a deletion of language.

Bill Romine, attorney, representing only himself. Mr. Romine presented the committee with a prepared statement on S.B. 41. (Attac

At this time, Gregg Morgan of the State Bar of Montana testifie before the committee, suggesting amendments or withdraw S.B. 41 as it may be unconstitutional as a breach of contract. (See Exhibit 1)

John Bell, a Helena attorney who said he believes S.B. 41 is clearly unconstitutional.

Mike Young, Attorney for the Montana Department of Administrati at this time said that his previous comments were only in regard to S.B. 43, 53 and 40.

At this time, Chairman Turnage explained S.B. 41, stating that it was the last bill worked up by the subcommittee, and that the committee should hear from the bill's originator, Rep. Herb Huennekens, on it.

Senator Towe told the committee that he definitely thanked the researchers who worked on this and that the study is a great credit to the Legislative Council and its staff.

The Chairman asked for questions of committee members.

There being no further business, the committee adjourned at 10:47 a.m. to reconvene January 13, 1977, at 9:30 a.m. in Room 442.

Jean A. Turnage

SENATOR JEAN A. TURNAGE, Chairm

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 1/12/77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		EX
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		EX 10:00

Each day attach to minutes.

Senate Bill Number 41 January 12, 1987

Mr. Chairman, and members of the Committee, my name is William L. Romine. Although I am a Registered Lobbyist, I do not appear here today on behalf of any principal, but instead, on my own behalf as a licensed and practicing Montana Attorney. I oppose passage of Senate Bill 41.

I personally resent the implication of this Bill, which appears to be that attorneys are over charging their clients, and receiving compensation over and above the amount that should be actually due them for their skills and services.

As we all know, most personal injury actions are brought on behalf of the Plaintiff based upon a contingent fee with the attorney. This is because most injured Plaintiffs cannot afford to pay the attorney on a time and expense, or flat fee, basis. The contingent fee is relatively large primarily because the attorney takes the risk of either a small recovery or no recovery at all. The attorney may have many many hours involved in a claim, but be unsuccessful for one reason or another, and therefore be paid nothing for his extensive services.

I also do not believe that the State should be involved in private contracts between attorneys and their clients. These contracts are negotiated and entered into between the attorney and the injured Plaintiff, and are negotiated prior to the time a settlement is awarded or a judgment is secured. They are based upon the uncertainty of any award or settlement, and all parties are taking a certain amount of risk in entering into contingent fee contracts.

In those cases where a claim is made against the State or a County, which do not involve personal injuries, for instance, a breach of contract claimed by a highway contractor against the Highway Department, the attorney is most often paid on a time and expense basis and not on a contingent fee basis. The client is generally financially able to pay the attorney for his time and effort, and this is how it should be. On the other hand, the contingent fee is a boon to the injured Plaintiff who generally is financially unable to pay for the services rendered.

I am also troubled by the fact that this Bill would allow the revision of the attorney fee arrangement after services have been performed. If this Bill were aimed at Doctors, and provided that the Doctor's fee would be determined after the services has been performed, and was to be based upon the amount of time the Doctor spent, the complexity of the medical problem and the skill of the Doctor, I am sure this Bill would be highly controversial.

Finally, if one of the intents of Senate Bill 41 is to attempt to get more of the insurance premium dollar into the hands of the injured party, since it is the claim of many insurance companies that large amounts of premium dollars go to the attorney, then it would appear to me that the Bill should also provide that the attorney representing the State, which most probably is an insurance attorney, will also have his fee determined by the court.

I urge, therefore, that the Committee report unfavorably on Senate Bill 41.

William L. Romine

Chairman Turnage asked her if she had seen Senate Bill 58. Ms. Dieziger said that she did not feel it covered everything contained in S.B. 95.

There were no opponents to this bill present.

In answer to questions of the Chairman regarding the definitic of peer review committee and audit committee, Mary Mouat of St. Peters Hospital and the Montana Nurses Assn., said that a peer review committee deals with somebody within your own profession and that the audit committee is one set up to deal with specific problems and would set certain standards of care. She further testified that the audit committee is not covered by a peer review committee.

At this time, Chairman Turnage told the witnesses that the committee would ask for the return of Senate Bill 58 and try to make one bill which would be acceptable to them. He assigned Senators Olsen and Lensink to work on this matter. The witnesses were then thanked for appearing and excused.

DISPOSITION OF SENATE BILLS 40, 41, 42, 43 and 53:

SENATE BILL 43 - Senator Towe moved to amend page 5, section 8 line 4, following "may" by inserting ", in its sole discretion," and following "for" by inserting "noneconomic damages or";

And to further amend page 5, section 8, on line 6, following "section" by inserting ", or both,";

And to further amend page 5, section 8, on line 7, following "judgment." by inserting "No insurer is liable for such noneconomic damages or excess economic damages unless specifically authorized in the contract of insurance."

The above motion carried unanimously.

Senator Towe then moved that Senate Bill 43, as amended, DO PA The motion carried unanimously.

SENATE BILL 53 - Senator Towe moved DO PASS. The motion carried unanimously.

SENATE BILL 41 - Senator Lensink moved DO NOT PASS. As a substitute motion, Senator Regan moved to pass consideration for the day. The substitute motion of Senator Regan carried on a vote of 5 - 3. (See attached voting record)

The Chairman assigned a subcommittee of one, namely, Senator Regan, to research S.B. 41 and report back in about ten days.

Sam Gilluly, Montana Press Assn. said that they like the bill with the proposed amendment. The chairman of the committee which authored the bill said that it had been discussed by the committee and most of the committee members will accept the amendment, and that Senator Towe who was a member of that committee had reviewed the amendment.

There were no opponents to S. B. 439 present, so the Chairman allowed the committee members to ask questions of the witnesses.

Senator Turnage, Chairman, asked about a fiscal note for this bill, and suggested that the local government impact should be considered too in the fiscal note.

CONSIDERATION OF SENATE BILL 418:

Deirdre Coughlan, representing the Womens Law Caucus and Women's Place, spoke in support of this bill, saying that this bill would discourage county attorneys from refusing to prosecute rape cases when a woman was a social companion and had been drinking or doped. There are not many of these cases. The rules of evidence would apply in this kind of case. She also said that the law has been misconstrued and proposed an amendment. (See Exhibit 1)

There were no opponents to the bill, so the Chairman allowed committee members to question the witness.

EXECUTIVE SESSION (Resumed)

The following Senate Bills were acted on as follows:

S.B. 41 - Senator Regan had Joan Mayer, attorney for the Legislative Council, draft a new section 1, and moved that the present section 1 be stricken and the new section 1 inserted. (See attachment #3) The motion carried unanimously. Senator Regan then moved that S.B. 41 as amended DO PASS. The motion carried with Senator Olson voting "No".

S.B. 12 - Senator Towe submitted two pages of amendments (See Exhibits 1 and 2) and moved that they be adopted. The motion carried unanimously. He then moved to amend page 1, section 2, line 14, following "includes", by inserting "but is not limited to". The motion carried unanimously. He then moved that S.B. 12 as amended DO PASS. the motion carried on a vote of 4 - 3 with Senator Warden excused as she was at another meeting, and later voting "Yes", thereby making the vote 5 - 3.

S.B. 67 - Sen. Towe moved DO PASS. Motion failed on a vote of 2 - 5 with Senator Warden excused and later voting "Yes", thereby making the vote 3 - 5.

S.B. 439 - Senator Olson moved that S.B. 439 DO NOT PASS. Motion carried on a vote of 5 - 1 with Senator Towe voting "No" and Senators Warden and Regan excused to attend other meetings.

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977

9:00 A.M.

Date 2-18-77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓ 9:40		
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓ 9:55		
TOWE, Tom	✓		
WARDEN, Margaret	✓ 10:05		✓ ✓ 10:30

Attach. #3

Respectfully report as follows: That SENATE Bill No. 41,
the introduced bill, be amended as follows:

1. Amend the bill, page 1, lines 9 through 17.
Strike: all of the bill following the enacting clause
Insert: "Section 1. Court approval of attorney's fees. (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claims against the state or a political subdivision thereof, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The district court may regulate the amount of the attorney's fee in any tort claim against the state or a political subdivision thereof. In regulating the amount of the fee, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.

(3) Attorney's fees regulated under this section shall be made a part of the court record and are open to the public.

(4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing attorney's fees under this section, he forfeits the right to any fee which he may have collected or been entitled to collect.